

(Caption of Case)

In Re: Friends of the Earth and Sierra Club v.
SCE&G, etc.Docket Nos. 2017-207--E, 2017-305-E and 2017-370-
EBEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2017 - 207 - E

(Please type or print)

Submitted by: Robert GuildSC Bar Number: 2358Address: 314 Pall Mall StreetTelephone: 803 917 5738Columbia, SC 29201

Fax: _____

Other: _____

Email: bguild@mindspring.com

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DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition☒ Request for item to be placed on Commission's Agenda
expeditiously☐ Other: _____

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input checked="" type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input checked="" type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

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ROBERT GUILD

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BY ELECTRONIC FILING AND SERVICE

October 18, 2018

Ms. Jocelyn D. Boyd
Chief Clerk & Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

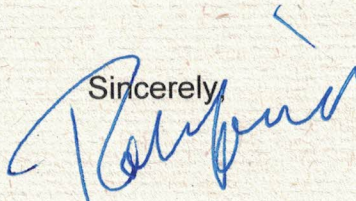
In Re: Friends of the Earth and Sierra Club v. SCE&G, etc.
Docket Nos. 2017-207--E, 2017-305-E and 2017-370-E

Dear Ms. Boyd:

Enclosed please find Friends of the Earth and Sierra Club Response to SCE&G's Second Motion to Dismiss for filing and consideration.. I certify that I am, this day, filing and serving the parties with these documents electronically.

With kind regards I am

Sincerely,



Robert Guild

Encl.s

CC: All Parties



BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NOS. 2017-207-E, 2017-305-E and 2017-370--E

In Re: Friends of the Earth and Sierra Club,)
Complainants/ Petitioners,)
)
v.)
)
South Carolina Electric & Gas Co.,)
Defendant / Respondent.)

In Re: Request of the South Carolina Office)
of Regulatory Staff for Rate Relief to SCE&G)
Rates Pursuant to S.C. Code Ann. § 58-27-)
920)

In Re: Joint Application and Petition of South)
Carolina Electric & Gas Company and)
Dominion Energy, Inc. for review and)
approval of a proposed business combination)
between SCANA Corporation and Dominion)
Energy, Inc., as may be required, and for a)
prudency determination regarding the)
abandonment of the V.C. Summer Units 2)
& 3 Project and associated merger benefits)
and cost recovery plans)

FRIENDS OF THE EARTH AND SIERRA CLUB RESPONSE TO
SCE&G'S SECOND MOTION TO DISMISS

By Motion of October 8, 2018 SCE&G again seeks to dismiss the June 22, 2017, Complaint/Petition of Friends of the Earth and Sierra Club, Docket No. 2017-207-E, which initiated these consolidated proceedings, now set to be heard on the merits in two (2) weeks, beginning November 1, 2018. The Motion, which asserts grounds for relief previously rejected by the Commission, is frivolous on its face, seeking merely to harass and oppress Complainants/ Petitioners on the eve of trial, and is unwarranted on its merits. It should be summarily denied.

As argued in our July 21, 2017, Response to SCE&G's first Motion to Dismiss:

Fundamentally, the motion to dismiss for failure to state facts sufficient to constitute a cause of action, pursuant to Rule 12(b)(6), SCRCP, must fail if the facts and inferences drawn from those facts, as alleged, would entitle the complainants to relief, "on any theory:"

Under Rule 12(b)(6), a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. *Id.*

Brazell v. Windsor, 384 S.C. 512, 682 S.E.2d 824 at 826 (2009). Granting SCE&G's Motion to Dismiss would thus require complete rejection, "on any theory," of the Commission's authority to (1) require a prudence review of continued construction or abandonment of the failing project; (2) the Commission's authority to require SCE&G to cease and desist expending unauthorized and excessive capitol costs on an imprudent generating project; (3) the Commission's authority to assess and determine the prudence of an alternative energy resource plan, including energy

efficiency and renewable generation, to replace the abandoned project; and (4) the Commission's authority to remedy the impact of unjust, unreasonable and unauthorized rates charged to the Company's ratepayers through ordering payment of refunds and reparations. In short, granting SCE&G's Motion to Dismiss would require the Commission to admit that it is powerless to effectively regulate this utility and powerless to stop the Company from continuing to imprudently incur costs for this failed project at its ratepayers' expense.

Response in Opposition to Motion to Dismiss, pp. 2-3, July 21, 2017.

In that same Response we then argued that, among other "theories" supporting relief on these claims, was the fundamental judicial principle that past Commission "prudence" approvals for nuclear project cost overruns were subject to reconsideration based on traditional rules providing relief from judgements:

Moreover, the finality of judgements is inherently subject to the limitations essential to preserve fundamental fairness, integrity and public confidence in the judicial and quasi-judicial process. The South Carolina Rules of Civil Procedure expressly provide for relief from final judgement for a number of reasons including, "mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party," Rule 60(b), SCRCP.

In addition, independent of the enumerated reasons listed under the Rule, a "fraud on the court" is deemed to subvert the very integrity of the institution itself, and to provide an independent basis for relief from a final judgement. Chewning v. Ford Motor Company, 346 S.C. 28, 550 S.E.2d 584 (2001). Pending discovery by the Complainants seek precisely such evidence of what SCE&G knew and when the Company knew it regarding the failure of this project when it sought and obtained the very Commission orders it now relies upon.

Response in Opposition to Motion to Dismiss, p. 4, July 21, 2017.

The Commission unanimously rejected that Motion to Dismiss, agreeing that:

(S)ince it cannot be concluded as a matter of law that the Friends of the Earth and Sierra Club cannot obtain relief on any theory in the case.

Order No. 2017-770 (December 20, 2017). If our claims were not moot then, some 6

months after the nuclear project's abandonment, nothing has made them moot now. SCE&G's arguments for dismissal have already been rejected by the Commission. Those issues have been decided. That decision should be confirmed.

SCE&G's Motion is expressly premised on an assertion of mootness on all of our claims, a purported admission by Complainants, based solely on a mischaracterized and out-of-context reference to arguments of this counsel supporting Transco's intervention in these proceedings. The point of our argument there was hardly that our claims were moot; but, to the contrary, that critical issues remained to be decided going forward, post nuclear project meltdown. The future impacts on ratepayers, including our members, of the nuclear project debacle remain to be decided by this Commission:

..... But we also ask that you consider the impact of that (abandonment) on ratepayers And, finally, thirdly, we ask that you consider the replacement energy future for South Carolina . . .

9/4/18 Transco Oral Argument, Tr. at 40. Moreover, the very core of the arguments before the Commission at that hearing was Transco's, and others', concerns about the very real potential impacts on South Carolina's energy future of SCE&G's proposed merger with the natural gas giant Dominion and its asserted plans for natural gas plant and affiliated pipeline expansion in our state. SCE&G and Dominion themselves propose to add natural gas generating capacity to the SCE&G system as part of their Joint Application and merger proposal. Our state's energy future is clearly at issue in this proceeding.

Just treatment of ratepayers to protect them from the harsh impacts of costs associated with the abandoned Summer nuclear project and optimizing the public interest in a just, reasonable and prudent energy future for South Carolina ratepayers- with or

without a Dominion takeover- remain the critical issues yet to be decided by this Commission in the proceedings initiated by Friends of the Earth and Sierra Club as well as the subsequent proceedings with which it has been consolidated.

CONCLUSION

For the foregoing reasons, Friends of the Earth and Sierra Club respectfully urge the Commission to deny the SCE&G Motion to Dismiss.

October 18, 2018



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ATTORNEY FOR FRIENDS OF THE EARTH
AND SIERRA CLUB